

1 under Rule 37, the court’s duty to dismiss was mandatory.” *Eberhart v. United*
2 *States*, 546 U.S. 12, 18 (2005). The Court went on to explain that Rule 33 sets forth
3 “rigid,” “inflexible,” “claim-processing rules” that require dismissal of an untimely
4 Rule 33 motion when the government raises a timely objection, but the government
5 can waive untimeliness by failing to object before the deciding court reaches the
6 merits. *Id.* at 13, 18-19. Therefore, although Rule 33 requires dismissal of an
7 untimely motion, that requirement is a claim-processing rule, not a jurisdictional
8 one.

9 The government stands by its position that Kareem’s Motion to Dismiss is
10 untimely and respectfully requests the Court deny for that reason in addition to its
11 lack of substantive merit.

12 Respectfully submitted this 13th day of September, 2019.

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14 United States Attorney
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15 *s/Kristen Brook*
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19 CERTIFICATE OF SERVICE

20 I hereby certify that on the 13th day of September, 2019, I electronically filed
21 the foregoing with the Clerk of Court using the CM/ECF system, and that true and
22 accurate copies have been transmitted electronically to counsel for the defendant
via the ECF system.

23 Daniel Drake & Daniel Maynard, Attorneys for Defendant

24 By: /s Joseph E. Koehler